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REGISTRATION SYSTEMS, INC., WRIGHT, FINLAY & ZAK, LLP and RENEE M.
PARKER, ESQ.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON (TACOMA)**

JAMES A. BIGELOW

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES, INC.;
GREEN TREE SERVICING, LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; WRIGHT, FINLAY & ZAK, LLP, TICOR
TITLE COMPANY, NATIONWIDE TITLE
INSURANCE COMPANY, RENEE PARKER,
and DOE DEFENDANTS 1-20,

Defendants.

Case No.: 3:14-cv-05798 BHS

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OPPOSITION TO
MOTION TO STRIKE PLAINTIFF'S
COMPLAINT FOR ANTI-SLAPP
VIOLATIONS**

[RCW 4.24.525(4)]

Second Amended Complaint filed:
February 23, 2015

Noting Date: April 10, 2015

**TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR
ATTORNEYS OF RECORD:**

Defendants GREEN TREE SERVICING LLC, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. ("MERS"), WRIGHT, FINLAY, & ZAK, LLP, and RENEE
M. PARKER, ESQ. (erroneously sued as Renee Parker) (hereinafter "Defendants" collectively)
by and through their counsel of record, Renee M. Parker of Wright, Finlay & Zak, LLP, files this
Response (hereinafter, "Response") to Plaintiffs' Opposition ("Opposition") to Defendants'
Motion to Strike Plaintiff's Second Amended Complaint in its entirety pursuant to Washington
State's Anti-SLAPP statute, RCW § 4.24.525(4) et seq. ("Motion"), plus Defendant's opposition
to Plaintiff's demand for an award of \$10,000.00 under 4.24.525(6)(a)(ii).

1 It is of particular note that the “tenant” of the Subject Property, Timothy Dietz, also
 2 initiated similar litigation tactics against law firms employed by defendants in his litigation. See
 3 Timothy Dietz v. Quality Loan Service Corp. of Washington; Wells Fargo Home Mortgage;
 4 Wells Fargo Bank, N.A.; Mortgage Electronic Registration Systems, Inc.; Merscorp, Inc.;
 5 McCarthy & Holthus LLP, 2014 WL 1245269 (W.D. Wash. C13-5948 RJB, Mar. 25, 2014).
 6 More specifically, in his litigation Dietz also filed a second amended complaint to name the law
 7 firm defending a mortgage-company and/or servicer and the foreclosure trustee in an
 8 unsuccessful attempt to frustrate the foreclosure process. His litigation was unsuccessful.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. PLAINTIFF INCORRECTLY STATES RCW 4.24.525 ONLY PROTECTS** 11 **CITIZENS OF WASHINGTON TON CONTEND THAT ATTORNEY-DEFENDANTS** 12 **ARE NOT PROTECTED BY THE STATUTE**

13 Plaintiff, who incidentally is now a citizen of California, creatively cites RCW 4.24.525
 14 (also known as the “Anti-SLAPP Statute”) using bracketed additions to conclude any non-citizen
 15 of Washington would not be statutorily protected. This contention is incorrect.

16 The statute does not differentiate based on citizenship, and does not contain language that
 17 limits participation or protection only to citizens of Washington State. RCW 4.24.525(4)(a)
 18 states that “[a] party may bring a special motion to strike any claim that is based on an action
 19 involving public participation and petition, as defined in subsection (2) of this section.”
 20 Subsection (1)(c) defines “Moving party” as “a person on whose behalf the motion described in
 21 subsection (4) of this section is filed seeking dismissal of a claim.” Subsection (1)(e) defines a
 22 “Person” as “an individual, corporation, business trust, estate, trust, partnership, limited liability
 23 company, association, joint venture, or any other legal or commercial entity.”

24 Congressional notes similarly lack reference to citizenship. The congressional notes from
 25 2010 c 118 elaborate that the legislature is (a) “concerned about lawsuits brought primarily to
 26 chill the valid exercise of the constitutional rights of freedom of speech and petition for the
 27 redress of grievances” and (c) “[t]he costs associated with defending such suits can deter
 28 individuals and entities from fully exercising their constitutional rights to petition the
 government and to speak out on public issues.” The “purpose of this legislation is to (a) Strike a

1 balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons
 2 to participate in matters of public concern [and] (b) Establish an efficient, uniform, and
 3 comprehensive method for speedy adjudication of strategic lawsuits against public
 4 participation...” *See also, Macias v. Hartwell*, 55 Cal. App. 4th 669, 672, 64 Cal. Rptr. 2d 22
 5 (1997); *Bradbury v. Superior Court*, 49 Ca. App. 4th 1108, 1113, 57 Cal. Rptr. 2d 207 (1996).

6 Congress could have limited the definition of a person or the right to move under the
 7 Anti-SLAPP Statute to citizens of the state, either in the statute itself or by stating this in the
 8 notes, but did not do so. Where a statute is silent, the courts decline to read additional terms into
 9 that statute or to “simply impose its own construction of the statute.” *Chevron, U.S.A., Inc. v.*
 10 *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984). Where a “statute is
 11 silent, we decline to make it speak.” *Ibrahim v. AIU Ins. Co.*, 177 Wash. App. 504, 514 (2013).

12 Because Plaintiff fails to show the statute is expressly limited to use by citizens of
 13 Washington, and similarly fails to cite case law supporting his contention, his argument fails.

14 **II. ATTORNEY-DEFENDANTS’ ACTIONS FALL WITHIN THE PROTECTED** 15 **CATEGORY INTENDED BY CONGRESS**

16 Plaintiff tries to state differences between the wording of “public interest” and “public
 17 concern” to refute that Attorney-Defendants’ actions fall within a protected category.

18 Opposition, ¶ 5. This argument is meritless, and Plaintiff is grasping at proverbial straws.

19 RCW 4.24.525(4)(a) specifically states that it covers any “public concern.” An issue of
 20 public concern has been broadly defined as “any issue in which the public is interested.”
 21 *Nygard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th 1027, 1042 (2008) (emphasis in original). “The
 22 issue need not be ‘significant’.... [I]t is enough that it is one in which the public takes an
 23 interest.” *Id.*; see also *Hecimovich v. Encinal Sch. Parent Teacher Org.*, 203 Cal. App. 4th 450,
 24 465 (2012) (public interest “[m]ay encompass activity between private people.”); *Spratt v. Toft*,
 25 180 Wn. App. 620, 632, 324 P.3d 707, 712 (2014) (the standard to prove a case falls within the
 26 statutory ambit is “minimal.”).

27 A claim for relief, such as judicial foreclosure, filed in court is “indisputably a statement
 28 or writing made before a judicial proceeding.” *Navellier v. Sletten*, (2002) 29 Cal.4th 82, 90;

1 *Feldman v. 1100 Park Lane Assocs.* (2008) 160 Cal.App.4th 1467, 1480. Pleadings, statements
 2 and writings “in connection with” civil litigation are covered by the Anti-SLAPP statute. **It**
 3 **need not be shown that the litigated matter is of public interest or concern.** *Briggs v. Eden*
 4 *Council for Hope & Opportunity*, (1999) 19 Cal.4th 1106, 1123 (emphasis added).

5 Plaintiff urges this Court to adopt the “public concern” standard promulgated by *Connick*
 6 *v. Myers*, 461 U.S. 138 (1983) (the citation is assumed by Attorney-Defendants because Plaintiff
 7 failed to include any cite in his brief). Opposition, ¶ 3. *Connick* would not be the incorrect
 8 standard here because the *Connick* case involved a case of employment law and constitutionality
 9 of a questionnaire Respondent distributed in the course of employment as a “matter of public
 10 concern” that was used to then terminate the Respondent. *Connick* at 138. The concept of “public
 11 concern” in *Connick* has no relation to the basis and purpose for the Anti-SLAPP Statute in
 12 Washington.

13 **III. WASHINGTON BASED ITS ANTI-SLAPP STATUTES ON A CALIFORNIA** 14 **MODEL, EXCEPT THAT WASHINGTON CASE LAW PROVIDES A MORE** 15 **STRINGENT THRESHOLD FOR PLAINTIFF TO PREVAIL ON HIS CLAIMS** **AGAINST ATTORNEY-DEFENDANTS**

16 Plaintiff’s Opposition alleges deficiencies in Attorney-Defendants’ Anti-SLAPP Motion
 17 because it is “based on California law” that is inconsistent with Washington’s statutory
 18 construction. Opposition, Paragraphs 3, 5. Plaintiff is clearly mistaken, and attempts to mislead
 19 this Court with his red-herring argument.

20 Case law is clear that Washington’s Anti-SLAPP law is specifically modeled on the
 21 California Civil Code, and Washington’s courts “look to California cases for aid in interpreting
 22 the act.” *Spratt v. Toft*, 180 Wn. App. 620, 631, 324 P.3d 707, 712 (2014); *Phoenix Trading,*
 23 *Inc. v. Loops LLC*, 732 F.3d 936, 941 (9th Cir. 2013) (citing *Castello v. City of Seattle*, 2010 WL
 24 4857022, *3 (W.D. Wash. 2010)).

25 The principal difference between Washington and California’s Anti-SLAPP law is that a
 26 responding party in Washington must establish a probability of prevailing through clear and
 27 convincing evidence, while a responding party in California need only show some likelihood of
 28 success. Compare RCW 4.24.525(4)(b); Cal. Civ. Code § 425.16; see also *Premier Med. Mgmt.*

1 *Sys., Inc. v. California Ins. Guarantee Assn.*, 136 Cal. App. 4th 464, 477 (2006) aff'd sub nom.
 2 *Premier Med. Mgmt. Sys., Inc. v. California Ins. Guarantee Ass'n*, 163 Cal. App. 4th 550 (2008)
 3 (a California anti-SLAPP respondent need only state a "legally sufficient claim" with a "prima
 4 facie showing of facts.").

5 **IV. BUT FOR ATTORNEY-DEFENDANTS' DEFENSE OF THE NON-ATTORNEY-**
 6 **DEFENDANTS IN THE CURRENT LITIGATION, PLAINTIFF WOULD NOT HAVE**
 7 **HAD ANY OTHER CAUSE TO NAME ATTORNEY-DEFENDANTS IN THE SECOND**
 8 **AMENDED COMPLAINT**

9 Plaintiff is retaliating against the Attorney Defendants for their legal representation of the
 10 Non-Attorney Defendants, and appears to arise from Defendants' success on its prior Motion to
 11 Dismiss First Amended Complaint. In his Second Amended Complaint Plaintiff did not take
 12 measures to correct or cure the deficiencies that plagued the Amended Verified Complaint.
 13 Instead Plaintiff simply added the Attorney Defendants, and parties related to the escrow and
 14 closing of the loan, to the pre-existing causes of action to "cure" the defects, plus added
 15 unfounded and unsupported "slander of title" and "emotional distress" claims. But for this
 16 litigation, Plaintiff would have had no reason whatsoever to include the Attorney Defendants as
 17 defendants in the Complaint, and Plaintiff otherwise raises no legitimate cause of action against
 18 the Attorney Defendants for any action taken outside of this litigation.

19 There is no trickery or incitement of "legal sparring" by Attorney-Defendants as alleged
 20 by Plaintiff in Paragraph 1 of his Opposition. Rather, the Anti-SLAPP Motion is based on the
 21 statutory right of the Defendants to protection from the types of allegations by Plaintiff
 22 specifically used to either chill Defendants' speech or impede their participation in the public
 23 forum provided by the judicial system. The Attorney Defendants have no relation or logical
 24 connection to the underlying loan, the default on part of Plaintiff, or the non-judicial foreclosure
 25 action for the Subject Property. The Attorney Defendants are, of course, attorneys, and they are
 26 merely being sued for their actions as attorneys. Accordingly, their conduct is protected speech
 27 as covered by the Washington Anti-SLAPP statute pursuant to RCW 4.24.525.

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V. PLAINTIFF CANNOT PROVE HIS CLAIMS AGAINST ATTORNEY-DEFENDANTS UNDER THE BURDEN OF CLEAR AND CONVINCING EVIDENCE IN ORDER TO DEFEAT THE ANTI-SLAPP MOTION

Plaintiff jumps through many hoops to justify the fruitless arguments made in his Second Amended Complaint and inclusion of Attorney-Defendants in his claims. The Second Amended Complaint failed to address any of the deficiencies raised by the Court in its opinion on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint. Instead Plaintiff augmented his claims merely by adding additional defendants to answer to his claims.

If the cause of action is based on protected activity, then the anti-SLAPP statute applies, and the burden shifts to the responding party to prove the claim's merits. See, e.g., *Garretson v. Post*, 156 Cal. App. 4th 1508 (2007); *Wallace v. McCubbin*, 196 Cal. App. 4th 1169, 1190 (2011), as modified on denial of reh'g (Jul. 26, 2011).

Under RCW 4.24.525(4), a moving party can bring a special motion to strike any claim based on an action involving "public participation and petition," and responding party must then establish a likelihood of prevailing on the challenged claims with the heavy burden of clear and convincing evidence. See, *Bevan v. Meyers*, 183 Wash.App. 177, 334 P.3d 39 (Div. 1, 2014); *Phoenix Trading, Inc. v. Loops LLC*, 732 F.3d 936, 941 (9th Cir. 2013); and *Townsend v. State Dept. of Transp.*, 170 Wash.App 1040 at *3 (2012) (unpublished).

The "clear and convincing" standard is more than a bare preponderance, and requires evidence that a fact is "highly probable." See *In re Sego*, 82 Wn.2d 736, 739, 513 P.2d 831 (1973); see also *Bland v. Mentor*, 63 Wn.2d 150, 154, 385 P.2d 727 (1963).

Because Plaintiff failed to cure the defects from his First Amended Complaint, it is pretty clear that he will not meet the requisite likelihood of prevailing on the Second Amended Complaint by clear and convincing evidence. As a result the Anti-SLAPP Motion must be granted in favor of Attorney-Defendants.

VI. PLAINTIFF IS NOT ENTITLED TO PUNITIVE DAMAGES UNDER RCW 4.24.525(6)(a)(ii)

For the reasons explained above, the Attorney-Defendants have demonstrated that they are entitled to an order in their favor on this Motion to Strike. Accordingly, it is appropriate for the Court to grant Attorney-Defendants' request to be awarded \$10,000.00 pursuant to RCW

1 4.24.525(6)(a)(ii), and to deny Plaintiff's demand, based on unfounded (and outright false)
2 claims and suppositions, of an award of \$10,000.00.

3 **IV. CONCLUSION**

4 Based on the foregoing reasons, the Attorney Defendants respectfully request that this
5 Court grant their Anti-SLAPP Motion to Strike the Complaint in its entirety, and award
6 reasonable attorneys' fees incurred in bringing forth this Anti-SLAPP motion, currently
7 anticipated to be in the amount of \$3,102.00, plus the additional statutory award of \$10,000.00.

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9 Respectfully submitted,
WRIGHT, FINLAY & ZAK, LLP

10 Dated: April 8, 2015

11 By: /s/ Renee M. Parker, Esq.
12 Renee M. Parker, Esq., WSBA No. 36995
13 Attorneys for Defendants, GREEN TREE
14 SERVICING LLC, MORTGAGE
15 ELECTRONIC REGISTRATION
16 SYSTEMS, INC. ("MERS"), WRIGHT,
17 FINLAY, & ZAK, LLP, and RENEE M.
18 PARKER, ESQ. (erroneously sued as Renee
19 Parker)
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CERTIFICATE OF SERVICE

I, Steven E. Bennett, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 280, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On April 8, 2015, I served the within **DEFENDANTS' RESPONSE TO PLAINTIFF'S OPPOSITION TO MOTION TO STRIKE PLAINTIFF'S COMPLAINT FOR ANTI-SLAPP VIOLATIONS** on all interested parties in this action as follows:

- **Matthew T Adamson**
madamson@jbsl.com, lkondo@jbsl.com
- **James A. Bigelow**
sistermoonproductions@gmail.com
- **Timothy Dietz**
timthepostman@yahoo.com
- **Joseph H Marshall**
jommarshall@rcolegal.com, kstephan@rcolegal.com
- **Thomas F. Peterson**
tpeterson@sociuslaw.com, lmckenzie@sociuslaw.com

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelope(s) addressed as follows:

☐ (BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this date following ordinary business practices.

☐ (BY ELECTRONIC MAIL) I caused each such document to be transmitted electronically to the parties at the e-mail address indicated. To the best my knowledge, the transmission was reported as complete, and no error was reported that the electronic transmission was not completed.

☒ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof

1 of service as required by Fed.R.Civ.P.5(b)(2)(E). A copy of the NEF shall be attached to
2 any document served in the traditional manner upon any party appearing pro se.”


3 [] (BY FACSIMILE) The facsimile machine I used, with telephone no. (949) 477-9200,
4 complied with California Rules of Court, Rule 2003, and no error was reported by the
5 machine.

6 [] (BY NORCO DELIVERY SERVICE - NEXT DAY DELIVERY) I placed true and
7 correct copies of thereof enclosed in a package designated by Norco Delivery Service
8 with the delivery fees provided for.

9 [] (State) I declare under penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct.

11 [X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this
12 court at whose direction the service was made.

13 Executed on April 8, 2015 at Newport Beach, California.

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15 Steven E. Bennett
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